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OFFICE OF PETITIONS

In re Application of
Brinkhues
Application No. 10/706,122
Filed: November 12, 2003
For: PHARMACEUTICAL SYRINGE PISTON AND METHOD AND DEVICE THEREFOR
Pub. No.: US 2004/0099994 A1
Pub. Date: May 27, 2004

This is a decision mailed on the request for corrected patent application publication under 37 CFR 1.221(b), filed on July 26, 2004 for the above-identified application.

The request is DISMISSED.

The instant request is that the application be republished because the front page of the patent application publication includes error in the foreign priority information as the filing date is listed as "May 11, 2002," not "May 11, 2001".

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹

The instant request does not identify a material mistake in the publication made by the Office. The filing date of the priority application was listed incorrectly on the patent application publication because applicant provided the incorrect date in the Declaration filed on November 11, 2003.

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

The request for a corrected filing receipt filed on May 20, 2004, to change the filing date of the priority application is not in compliance with 37 CFR 1.55.

In order to make a late benefit claim to the earlier filed applications, applicant must submit a petition to accept an unintentionally delayed claim under 35 U.S.C. 119 and 120 for the benefit of the earlier filed applications. The petition must include 1) the surcharge (\$1370) set forth in 37 CFR 1.14(t) and 2) a statement that the entire delay between the date the claim was due under paragraph (a)(5) of this section and the date the claim was filed was unintentional.

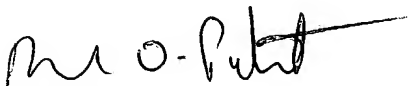
Applicant's request for a corrected patent application publication on July 26, 2004, may constitute a "failure to engage in reasonable efforts to conclude processing or examination of the application." See 1.704(c). This determination will be made on or after a mailing of a Notice of Allowance.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(b), must be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Inquires concerning this communication should be directed to Mark Polutta at (571) 272-7709.


Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy